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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re	:	Chapter 7
	:	
SILVIA NUER,	:	Case No. 08-14106 (REG)
	:	
Debtor.	:	

RESPONSE OF JPMORGAN CHASE BANK, N.A. IN OPPOSITION TO DEBTOR'S MOTION TO STRIKE

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

JP Morgan Chase Bank, N.A. ("**JPMorgan**"), as successor servicer to Washington Mutual Bank, F.A.("**WaMu**"), for Deutsche Bank National Trust Company, as Trustee ("**Deutsche Bank**") for Long Beach Mortgage Trust 2006-2 (the "**Trust**"), for its opposition to the Debtor's motion, dated February 6, 2010, to strike (the "**Motion to Strike**") JPMorgan's letter, dated January 28, 2010 (the "**Withdrawal Letter**") withdrawing JPMorgan's motion, dated November 7, 2008, for relief from the stay ((Docket No. 7, as amended and supplemented by Docket Nos. 28 and 32, the "**MFR**"), respectfully states:

1) The Motion to Strike needlessly multiplies the litigation in this case based upon a total disregard for recent proceedings before this Court and the facts of this case.

2) At a status conference held on January 7, 2010, JPMorgan sought leave to file motions to disqualify counsel for the Debtor and for summary judgment with respect to the MFR. After more than 2 hours, the Court granted JPMorgan leave to file its motions, but made

certain observations concerning whether the motions should be filed and how the issues in this case should proceed. (A copy of the relevant pages of the January 7 Transcript is annexed hereto for the convenience of the Court).

3) The Court clearly articulated the need to bifurcate the MFR from the sanctions issues in order to mitigate continuing losses to the lender and to permit the sanctions issue to proceed. (Tr. at pp.51 and 57).

4) Upon consideration of the Court's comments concerning case management and the efficient use of the Court's time, JPMorgan agreed to withdraw its request to file the disqualification motion and represented to the Court that it expected to withdraw the MFR in anticipation of filing a new motion for relief in the event the parties were unable to consensually resolve a loan modification or a consensual turnover of the premises. (Tr. at p.58).

5) Honoring the representations made to this Court, on January 8, 2010, the undersigned provided Debtor's counsel with a mortgage loan modification package. However, as of the filing of the Withdrawal Letter, no documents had been received in support of a loan modification and there were no ongoing settlement discussions concerning the MFR. As of the date of this filing, no documents in support of a loan modification or other consensual resolution of the MFR have been received.

6) Consistent with this Court's comments at the January 7 status conference, and the representations made to this Court, the Withdrawal Letter clearly stated that it was without prejudice to the ongoing request for sanctions by the Debtor as joined by the United States Trustee. Indeed, since the filing of the Withdrawal Letter, JPMorgan continued to treat the sanctions request as a contested matter. The Debtor's discovery requests were responded to and documents were produced to the Debtor and the United States Trustee. JPMorgan has also advised the United States Trustee and counsel for the Debtor that it is seeking to produce witnesses in response to deposition notices, but

schedules have not been confirmed.

7) Nevertheless, the Debtor filed the Motion to Strike, seemingly in direct conflict with the facts, the January 7 conference, and the interests of the Debtor.

8) After the production of approximately 1380 pages of documents, and as will be more fully addressed in subsequent proceedings, the evidence is that no false or fraudulent documents were produced in support of the MFR and there is no basis for the imposition of sanctions. The MFR accurately described (x) the creditor as Deutsche Bank, as Trustee for the Trust, and as the holder of the Note and duly recorded Mortgage; (y) the movant as JPMorgan as successor servicer for the Trust; and (z) the basis for the relief sought, including the Debtor's undisputed failure to make a payment on the note and mortgage since September 2007 and the Debtor's undisputed intent to surrender the premises which were never the Debtor's residence.

9) Despite Debtor's mischaracterizations, the sole reason for the filing of the Withdrawal Letter was to comply with the Court's concerns - - dispose of the motion for relief as efficiently as possible and proceed with the issues related to sanctions. (Tr. at p. 56).

10) The same cannot be said for the Motion to Strike. There is no logical reason for the Debtor to oppose the withdrawal of the MFR, which was the procedure suggested by this Court. (Tr. at pp. 50-51).

11) To the extent that the Debtor claims that JPMorgan did not comply with Fed. R. Civ. P. 41, the Debtor is wrong and is unnecessarily multiplying litigation and motion practice. Bankruptcy Rule 9014(c) clearly provides that the Court may direct that certain "7000 Rules" do not apply in contested matters. The voluntary withdrawal of the MFR was consistent with the express representations made to the Court in response to the Court's clearly stated intention to minimize motion practice on the relief from stay and deal with the sanctions issue. (Tr. at p.56). On January 7, the Debtor did not state any opposition to this process. If the Debtor is now insisting upon more motion practice contrary to the

stated intention of the Court and all parties who appeared before the Court on January 7, JPMorgan requests that the Court simply memorialize its suggested approach in the form of an order approving the withdrawal of the MFR on the terms set forth in the Withdrawal Letter.

Conclusion

12) There is no legal, factual or rational basis for the filing of the Motion to Strike or the imposition of sanctions against JPMorgan, pursuant to 28 U.S.C. §1927[1] or Bankruptcy Code §105. To the contrary, the filing of the Withdrawal Letter was wholly consistent with the representations made to the Court and observations made by the Court as to how this matter should proceed.

13) JPMorgan expressly reserves its rights to seek fees and expense from counsel for the Debtor, pursuant to 28 U.S.C. §1927 and Bankruptcy Code §105, in connection with the ongoing filing of such frivolous pleadings.

WHEREFORE, JPMorgan respectfully requests that the Motion to Strike be denied in all respects, including with respect to the award of sanctions, and that the Court grant JPMorgan such other and further relief as may be appropriate.

Dated: White Plains, New York
February 9, 2010

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as servicer for Deutsche Bank National
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[1] It appears that the Motion to Strike incorrectly refers to 28 U.S.C. §1928

JANUARY 7, 2010 TRANSCRIPT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: SILVIA NUER, *Debtor.*	Case No. 08-14106 *(reg)*
	New York, New York
	January 7, 2010

TRANSCRIPT OF CHAP 7 HEARING RE PRETRIAL CONFERENCE ON MOTION FOR RELIEF FROM STAY AS TO THE PROPERTY LOCATED AT 1651 METROPOLITAN AVENUE 7C, BRONX, NY 10462 FILED BY AMY E. PRZEWOZNY ON BEHALF OF JPMORGAN CHASE BANK NATIONAL ASSOCIATION AS SERVICER FOR DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR LONG BEACH MORTGAGE TRUST 2006-2

BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

A P P E A R A N C E S :

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Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

were some inconsistencies in the document where they said Chase is the Creditor. And then they submitted the Walter assignment, which said Chase was assigning the document to the bank.

These documents are not factually accurate. Was it nefarious? Was it to fabricate a transaction? No. It was -- and this is going to be -- and I acknowledge, this section here, unless we can get this resolved to the satisfaction of the Court and the Trustee, is going to be a question of fact. And the Court is going to want to know what the heck happened, because these are very serious issues.

MR. TEITELBAUM: But the belief was --

THE COURT: Pause, please, Mr. Teitelbaum. You are still looking for summary judgment. I take it implicit in your point is that while you see issues of fact relevant to the sanction, and what remedial action is appropriate, your contention is that the acknowledged deficiencies don't go to relief from the stay, they only deal with issues as to which the U.S. Trustee's Office and/or the Debtor and/or the Trustee -- the case trustee, would be in essence on offense against Chase.

MR. TEITELBAUM: That is the position because Your Honor -- and if it were easier, if you will, to simply withdraw the original motion for relief and file a very simple one, which lays out exactly what the facts are, there would really be no issue. I didn't want to do that.

THE COURT: Well, pause, please. Because insofar as

it might deal with the narrow issue of whether relief from the stay is or is not appropriately granted, there would be no problem as you say.

In terms of the institutional concerns that have been articulated by the U.S. Trustee's Office, and the fact that there must be hundreds, if not thousands of Debtors who don't have the benefit of counsel, who get this stuff done to them all the time, that's a huge issue from the prospective of a bankruptcy judge. And while I can't speak for the Office of the U.S. Trustee, I sense that that's something that was in her head when her office filed that response.

MR. TEITELBAUM: Your Honor, I want to, as Your Honor, say this, delicately if you will.

THE COURT: Sure.

MR. TEITELBAUM: I appreciate that concern. And Chase does. And that's why Chase has taken the steps that it's taken. And those have been listed and testified to the Office of the U.S. Trustee. But with respect to what has been "Done to Debtors" I respectfully would suggest for example in this case, this Debtor got the money. This Debtor borrowed the money to buy an apartment, the money went to the seller. Things happened outside of the control of Chase or the lenders as it were. The Debtor never moved into the apartment. The Debtor hasn't made a payment on this note since September of 2007. The Debtor hasn't made a payment to the co-op board. There are tens of thousands

the discharge having taken place, the motion for relief in the stay was moot, and impliedly that you didn't even need relief from the stay to proceed with the foreclosure.

MR. TEITELBAUM: I don't know if I read 362 the same way with respect to if it's still property of the -- if the trustee hasn't abandoned the property, I don't know think you fall under that subsection of 362.

THE COURT: You answered my question, because you're a pretty good lawyer. Probably at least as good as she is. And that's not a point that you're continuing to press.

MR. TEITELBAUM: No, Your Honor. And frankly we were considering -- and I've had discussions with the trustee's office as to why this property is still property of the state if it's intrinsically got no value. If it's to keep this alive, okay. But we recognize that point. I'm not pushing that point unless and until the property is abandoned in addition to the discharge.

THE COURT: I hear you. Now, apropos that, I want to ask a question to all of the stakeholders in the case, which I guess is everybody other than Mr. Zipes. But you're up there first. If she is not living there, and I well understand the desire of any Debtor to stay living in one's home; and if all agree that the property is under water; and if the Debtor indicated when she first filed her petition back in I think it was approximately October of 2008 that she intended to abandon;

and even if there was then some equity in the property, I suspect that the equity has since evaporated by reason of the accrual of interest even at the original rate putting aside whether this was a predatory loan or not; is it possible from your perspective -- and I don't want you to talk about settlement discussions -- to work out some kind of stip. under which the property is relieved from the constraints of the automatic stay and can be marketed or sold or taken in foreclosure or whatever with a stipulation that all parties' rights are reserved vis-à-vis the sanction, and any rights against Chase, so that in essence we're preserving everybody's rights on the issues that I see as most critical, while at the same time allowing Chase in substance to mitigate damages?

MR. TEITELBAUM: Your Honor, that was essentially the reason for the summary judgment motion on the issue for relief from the stay, because we do believe the two issues to be discrete. I would certainly be prepared to do such a stipulation whereby whether it's a deed-in-lieu or a foreclosure, whatever the title company will require to the clean-up title so it can be conveyed to a third-party and the third party. That would work for the bank and we would work for with the other parties and the court on the sanctions piece in addressing the issues of the initial pleading.

THE COURT: Mm-hm. Well, you're one of only several parties who would have to weigh in on this. But I appreciate

the --

MR. TEITELBAUM: Well, from the bank's perspective, we're not trying to get away from what is really of utmost concern to us and the Court is the propriety of the pleadings that are filed before this Court not only in this case, but in every case. And that's my job, and that's Chase's obligation, and Chase's commitment to the Court.

THE COURT: Okay. Thank you. Ms. Tirelli.

MS. TIRELLI: Good morning, Your Honor. I guess I want to first address my status as being admitted to this court -- being admitted to practice in this court. I am in fact licensed in the State of Connecticut, as well as in the federal district of Connecticut, which enabled me to become admitted in the Southern District of New York.

THE COURT: I'm sorry; I didn't hear the last.

MS. TIRELLI: That's what enabled me to become admitted to the Southern District of New York, which is why I'm here before you. I did make my admissions -- in other words where I'm admitted known to the trustee at the onset of this case. They wanted me to produce my certificate of good standing. I did so back at the beginning of the case. The trustee, meaning David Kittay, did in fact file a motion asking me to be appointed as counsel to the estate, as well as the counsel to the Debtor.

Chase voiced no objection at that time. After that

stay that appears to not make sense that people aren't entitled to ask about that if the Debtor has no problem with the stay being vacated.

My office thinks it's very important to have motions that make sense before the Court. And are fully documented. If there's an assignment that's missing, there should be an explanation as to why that assignment is missing. And then we can all move onto other areas of the law that are perhaps more relevant or germane to or interesting even, Judge.

But we are before this Court on this case because there were these assignments which Chase acknowledges. I don't know if they would call them false. They wouldn't call them false. But they were made up. And my office would call them false. So, we are dealing with that in this case and we're dealing with a bigger issue as well.

THE COURT: Mm-hm.

THE COURT: Now, I take it -- if I heard you right, Mr. Zipes, you're articulating what I would call institutional or systemic concerns. I take it it's those concerns that are of importance to your office and that you don't much care whether the Debtor and Chase ultimately sever the issue of relief from the stay so long as the institutional issues and the matter of sanctions survive without prejudice to anybody's rights?

MR. ZIPES: That's right, Your Honor, with one caveat that in this case if there is a factual issue that the Debtor

wishes to raise we would hope that Chase would work with the Debtor to the extent that's possible so that the Debtor is not incurring unnecessary legal fees in fighting that. If it's a simple motion to vacate the stay where the Debtor hasn't been paying, period, that's one matter. But if there's some story behind that -- and my office is not taking a position on that, but if there's some story behind that, we would expect the secured creditor to work with the Debtors to the extent that they can to make sure that that issue is resolved or is addressed in some way.

THE COURT: Mm-hm. Okay. Thank you. Mr. Teitelbaum, would you like to be heard --

MR. ZIPES: Judge, I'm sorry. I wanted to make one further point about Mr. Tirelli and her standing --

THE COURT: Sure.

MR. ZIPES: -- for the Court. My office obviously would treat that with great seriousness if an attorney is appearing before this Court that's not licensed. And in fact Mr. Teitelbaum was referring to a Westchester case *Castio* (ph) where there was a problem with the attorney. My office is concerned if that's the case.

We have had discussions with Mr. Teitelbaum because we treat what he says very seriously, and I think we're left with a non-resolution at this point. My office hasn't completed decided where it comes down on the issue of where an attorney is

not licensed in New York State.

We have local rules, bankruptcy rules, that allow attorneys to appear before you if they're admitted in the Southern District of New York, District Court. Now, those rules in turn don't require New York State license. So, it's not -- it can't per se rule that knocks out Ms. Tirelli here. It would have to be some issue -- underlying issue with her representation here. My office hasn't seen that, but if Mr. Teitelbaum believes that there's an issue, as always we're open to hearing it. We just haven't heard it. We actually applaud when Debtors' attorneys actually spend time and look at the issue more in depth in a situation like this. So, Judge, that's all I have. I'll sit down.

THE COURT: Okay. Mr. Teitelbaum, would you like to comment?

MR. TEITELBAUM: For briefly if I may, Your Honor. Perhaps most importantly hopefully I did not misspeak. I do acknowledge as Mr. Herndon testified that the two assignments factually did not accurately reflect the state of affairs. In other words that Chase was at the time the owner of the mortgage and was assigning it to the trustee, because at all times, the trustee was the owner -- the trust was the owner of the note through the trustee.

But not acknowledging that that was prepared with fraudulent intent or to deceive the Court. What I think I said,

and what I stand by and what we'd hopefully be able to prove is that there was a mistake of fact based upon the view by the attorneys and Chase apparently of the underlying facts. And they believe this document at the time to be necessary and truthful. It turned out not to be.

So, maybe it's a distinction without a difference. I'm not trying to figure you know figure out how many angels we can put on the head of a pin. I just want to be clear that I'm not acknowledging that there was an intent to deceive anybody in preparing this document. I acknowledge that the document was factually inaccurate and I think it remains to be determined what the ultimate facts were that led to that. And I just wanted that to be clear, Your Honor.

With respect to the issue I think that Your Honor raised on sanctions, do we address this case, do we need to address and go forward. If I can just be heard very briefly on that.

In the *Parson*, Judge Glenn did not require a stip. the U.S. Trustee's office asked Chase to prepare a stip. I just want to put a little flavor on this. But a letter -- and it was more than aspirations. It was what Chase had presently intended to do, and has in fact done and gone beyond. And we can make that letter available to the Court if you don't already have it. It is a matter of public record.

The concern that we have, and have expressed to the

U.S. Trustee's Office in connection with our agreements to do the best that we can, and to in fact go well beyond what's required in the local rules for the filing of relief from stay, is you know what I'll call the IBM Order, if you will, of way back when --

THE COURT: A consent decree.

MR. TEITELBAUM: Yeah. Because we've committed. If the UST's office and frankly if the judges of this court wanted to bolster the local rules so there was an even playing field for everybody as to what the rules are to file a motion for relief from the stay in this jurisdiction, that's great, and that's what we would commit to do. And in fact Chase does that in other jurisdictions. It confers with the bench and bar, and it works on procedures. And we've offered to do that.

What we have a real problem with is being held to a different standard than everybody else. We're prepared to play by the rules; we're prepared to go even the rules that we're committed to do, but the issue of a consent decree has not been in the realm of what we were willing to do with the U.S. Trustee's office. I just want to be frank with you as to why we are where we are on that.

You know we can identify for the Court the procedures that Chase has implemented. And in fact, Your Honor is right, we agree, someone that knows something about the facts of the case should be signing the affidavits. And there are people

that have been engaged at Chase, and policies have been put in place so that the motion is actually reviewed from a factual perspective. Not a legal memo of law. Obviously, that's the lawyer's job.

The checklist that we have now, and we've provided the checklist, is far more extensive than the worksheet required under the local bankruptcy rules. And again, the proof is somewhat in the pudding, knock wood. We actually -- I think Judge Morris actually granted a motion for relief from the stay that we recently filed. And the motion was reviewed by office, it was prepared by -- I don't remember which outside firm. Reviewed by my office back and forth, corrections made, things tweaked, filed, Judge Morris approved it. I don't remember the name of the case.

Unlike the Judge -- and this is to address your other point, Your Honor -- the case with Judge Drain voided the mortgage. That was a pretty extreme case from my understanding of the facts. The lawyers were not compliant with producing the documents and couldn't even produce the mortgage and note. We've done that. So, this is a very different case in that regard. I'm not minimizing the importance, but you raised it, so I just wanted to address the fact that we actually located the original note and mortgage. I have it in my office. So, we could prove our case.

And I favor, if you will, severing the two issues of

relief from stay. I'm sort of indifferent if we withdraw the motion, file a clean one, or just sort of treat it as file a motion for summary judgment, laying out what the facts are and move forward from here. I'm not looking to make more work for anybody.

And finally, Your Honor, if the Court is inclined on Ms. Tirelli with respect to her continued representation, you know bringing another lawyer in as co-counsel, I think it would be difficult. Mr. Shaev withdrew for whatever reasons he withdrew from this case. He was originally involved. Frankly, I think you're just going to be looking at Chase to pay more legal fees in all candor. And that doesn't serve anybody's interest.

So, if it is -- and I think we've all acknowledged the matter of the Court's discretion. If the Court so finds that Ms. Tirelli is doing an appropriate job under these circumstances, let's move forward and deal with the meat here. Really what I believe to be the meat, which is the sanctions of the case. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Teitelbaum. I'd like everybody to sit in place for a second, please.

(Long pause in hearing.)

THE COURT: All right, folks, our original agenda where we have to initially keep our eye on the ball was to address the concerns and requests made by Mr. Teitelbaum in his

letter of early December. But I think it would be desirable, if not essential to go beyond the matters that Mr. Teitelbaum originally brought us all here to address to see whether certain matters that he would like to address, ultimately could be short-circuited and how we could best address the totality of the matters that could be addressed to keep the legal fees downs for all and to put our efforts into what is most productive in terms of satisfying the various parties' concerns, including the concerns of a judge, both in this case, and going forward.

The two matters for which you, Mr. Teitelbaum, wanted authority to file a motion, were to disqualify and to seek summary judgment. On the first, disqualification, it appears, based on undisputed facts that Ms. Tirelli is duly licensed in Connecticut, both state and federal, and is appropriately admitted in the Southern District of New York, and authorized to appear in bankruptcy cases.

It that hadn't been so, either because she had been disbarred in New York, such as in the *Schmoil Klein* matter, or that she simply hadn't gotten the necessary prerequisites to appear in this Court, a motion of the character you would want to make would be, if not quite a slam dunk, a very strongly likely winner. But this is different. In essence you're relying upon the discretionary authority of a court to step in akin to what Judge Bernstein did.

If you want to make such a motion, I would let you,

but I would discourage you from doing it, because I think that in the exercise of my discretion I would ultimately conclude that factors that have to be weighed in the totality as part of any discretionary determination, such as the benefits of knowing the facts, the benefits of having a long familiarity with the matter, the fact that even amongst those lawyers, who are licensed in New York, there is a wide spectrum of skill, and it is normal for lawyers to practice and to litigate with the need to address the law of other states.

The motion while permissible is not likely to be a good expenditure of money. And in my case management responsibility, I want matters to proceed on the assumption that either that motion wouldn't be made or would not be granted if made. So, while technically speaking, I'm giving you permission to make it, I'm discouraging you from doing so.

On the matter of summary judgment, if such a motion were made, it would have about an even money chance of being successful on summary judgment. Although ultimately if the bank wanted to proceed with it's motion for relief from the stay either on a clean slate or after an evidentiary hearing, it's likelihood of succeeding would eventually get to be very, very, high. I don't know if it's productive to say that it would be a 90 percent chance of being ultimately successful or even higher.

But in the absence of some consensual resolution, it appears to me that with competent lawyering which the bank now

has that motion is ultimately going to win one way or the other. And while my preference would be, Mr. Teitelbaum, that you simply do a new clean motion, unaffected or uninfected by the earlier things, because of my sense that the motion is ultimately going to be successful and that the bank is ultimately going to be taking the property, I wonder whether going through the expense of a summary judgment motion is a good expenditure of money.

Again, technically speaking, I grant permission to make it, but I think that the process is better accomplished by short-circuiting the process.

Now, I forgot who suggested the idea of allowing time for a dialogue to take place. I think that's a good one. I could not authorize a summary judgment motion without first allowing Ms. Tirelli and Mr. Zipes to depose the two people whose names I keep forgetting. Arbus (sic) was that one?

MS. TIRELLI: Garbis.

THE COURT: Garbis.

MS. TIRELLI: And Scott Walter. Ann Garbis.

THE COURT: And Walter, right. So, that would cause delay in dealing with the summary judgment part. But their testimony is really relevant more for the sanctions prong and the remedial measures prong than it is for whether or not relief from the stay is ultimately granted. Because I think that unless the evidence that Mr. Zipes brought to my attention is

untrue, and unless I heard Mr. Teitelbaum wrong, everybody agrees that the facts that were then put forward were inaccurate and the real issue is scienter, intent, due care, whether people should be in a position where they keep doing what those guys did or what the lawyers who asked them to do it told them to do. And those are really ultimately relevant in my mind more to the sanctions and remedial measures prong than to the entitlement to relief from the stay prong.

As my earlier questions telegraphed and what I just said confirms, I think it is highly desirable for the four parties here to come into a stip. under which the relief from the stay issues are severed from the sanctions/remedies issues with full reservations of rights to all concerned. I think that getting the property, producing income or value of some sort as quickly as possible is in the interest of all concerned.

I do believe that Ms. Tirelli and especially Mr. Zipes have -- and for that matter the Chapter 7 Trustee -- Ms. Siegel is speaking on his behalf -- have articulated institutional concerns that ultimately I can't responsibly ignore and that I really need to deal with. But I don't think that we need to keep the property in limbo while that's going on. So, I would encourage, though I won't insist, the four of you to work out some kind of stip. that separates the foreclosure of the underlying property from the claims vis-à-vis sanctions and the remedial measures.

It is also the case that while I need to consider and approve any settlement you guys might reach from the institutional perspectives that I care about, what I mainly care about is appropriate sanctions for what happened, and especially remedial messages going forward. And what happens to the property is not a major element of the concerns that I care about.

Now, if you have had discussions about making this property available to the Debtor or working out a swap of her other apartment for this, or anything else you might do, or any payment or allowance to the Debtor, I have an open-mindness to all of those things. But what I want you folks to see if you can do is to see that if the property in question isn't going to be occupied by the Debtor, we can separate these issues to mitigate damages for all concerned.

Now, implicit in all of this if you are, all four of you, of a mind to come up with some kind of a stip. to sever the two kingdoms of issues that we have to discuss, we still have to work out a mechanism to see what an appropriate sanction would be if one can be agreed upon and be acceptable to me, or alternatively to tee that up for judicial determination.

As I indicated for that purpose, I think we do need to get the testimony of the two folks who executed those assignments and most likely the people at the Baum firm who took the actions that they did. I suppose they can ask to remain

moot, and I will rule upon any such contentions. Staying moot has the potential of subjecting the lawyers involved to substantial monetary risks, but certainly I'll consider that as well.

The sanctions matter is one which you may or may not be able to consensually resolve to my satisfaction. I would invite you to try. I care about a monetary sanction at least in part. But I care even more about curative measures going forward.

And while, Mr. Teitelbaum, your client may be unhappy about the notion of a consent decree, a consent decree might be -- especially if you plan to do it anyway -- a lot cheaper than paying the damages or sanctions that might otherwise be imposed. But I'm going to give you a full hearing on your contention that this was an innocent mistake.

The problem though is that if it turns out that appropriate measures were not in place, to avoid errors of this character, we might be in a position where the Baum firm was acting in reckless disregard of the interest of Debtors. And for that matter the Chapter 7 Trustees who rely upon the accuracy of the information that's presented to them. So that you can't necessarily assume that because people didn't do it out of malice that's going to be ending the issue.

As I said, however, my principal concern is insuring that I and the other judges in this district don't have to deal

with these problems again. And that measures that I gather that you've taken -- you personally have taken to reduce or eliminate problems of this character become university so that the judges in this district don't have to deal with further motions or issues of this type.

A matter of huge concern to me is that a very major percentage of the Chapter 7 Debtors whom I see on motions for relief from the stay with full recognition that in this largely commercial district, we here at Bowling Green get only a slice of the total universe. A huge number of them don't have lawyers. They don't have the Ms. Tirelli's, they don't have the Mr. Shaev's, who know what to look for.

And the Chapter 7 Trustees, when they look at the numbers, and I imagine there's an array of different ways they do their jobs; but in many cases, they're going to look to see whether there's money for the unsecured creditor community. And If they don't see that, they're not going to be as focused on the underlying concerns that I have and the U.S. Trustee's Office has, accept in those rare instances. And this Chapter 7 Trustee may be one of them where they are willing to put more effort into it.

I want to see that we can minimize the amount of motion practice here, and deal what I and the U.S. Trustee's Office really care about. So, here's what I want to happen. Mr. Teitelbaum, you can and should decide whether you want to

accept my invitations, which are not orders to not bother with the disqualification motion, and to make the summary judgment motion if you wish, but to also consider whether you simply want to make a new clean motion of your own.

And I also want the parties to put their noodles together to see if you can sever the matter of sanctions and stay relief. Get a stip. that allows Chase, as servicing agent through Deutsche Syndication Trust Number -- whatever it is -- to take title to the property. And to deal with the matter of sanctions separately. And then to see if we can work out some kind of settlement that I could approve, that I could responsibly approve to avoid matters of this character going forward. And if it does do that, the amount of monetary sanction that I would be of a mind to impose would be much, much smaller.

And what I what I think I would like you folks to do is to proceed with the discovery which we're going to need to do in any event, and for you to have a follow-up status conference with me in roughly the 30-day range, unless anybody wants it sooner to give me an update on the state of your thinking on the matters that I've addressed.

Technically speaking, leave to file both motions as requested by you, Mr. Teitelbaum, is granted. However, I would encourage further proceedings in accordance with the guidance that I've given you today.

Okay. Not by way of re-argument, are there any further matters anybody would like to raise?

MR. TEITELBAUM: Your Honor --

THE COURT: Mr. Teitelbaum.

MR. TEITELBAUM: -- very quickly, just to put everyone's mind at ease, we will take Your Honor's recommendation, if you will. We want to try to move forward in as efficient way as possible. I will withdraw the request for filing of the motion for disqualification so that we can focus on the more important issues. So, that this way we can focus. It doesn't go to the merits of it, but recognizing what's important here, let's try to focus on that.

With respect to the summary judgment motion, Your Honor, my recommendation to my client, number one, is we try to meet and confer about a stip. if we can resolve it. If we can't resolve it, I think what I would suggest, Your Honor, is I would write a brief letter to the Court saying we've tried, we can't, I'll file a motion for summary judgment. Probably what I'll do is withdraw without prejudice based on Your Honor's recommendation via motion. And as timely as possible file a new one. But we'll advise the court if that happens prior to the 30 days or at that time.

So, Your Honor, we would adopt your suggestions and approach and obviously on the issues of sanctions we're going to proceed and I will order a copy of the transcripts so all

parties concerned, can read the words that Your Honor spoke today. Thank you.

THE COURT: Okay. Subject to anybody else's ability to be heard, that sounds very reasonable to me. Ms. Siegel?

MS. SIEGEL: Your Honor, all I would request --

THE COURT: Come to the mic, would you please?

MS. SIEGEL: Sure. I'm sorry. All I would request since the Trustee has already spent over $20,000 monitoring this because he feels that this is a more global issue that he's concerned with, is that I be able to appear telephonically at the next status conference?

THE COURT: Oh, you bet.

MS. SIEGEL: Thank you, Judge.

THE COURT: You bet. Anything else, anybody?

MR. ZIPES: Judge --

THE COURT: Mr. Zipes?

MR. ZIPES: I would just state that to the extent that my office concludes or the parties conclude that there's a law firm issue here as well, that our rights are fully reserved in that regard.

THE COURT: You've got a reservation of rights on it. I do hope and expect that anything further that might affect them, that you tell them in advance so that they have an opportunity to be here and represented.

MR. ZIPES: Most certainly, Your Honor.

THE COURT: Okay.

MR. TEITELBAUM: Thank you, Your Honor.

THE COURT: All right. Thank you, folks. We're adjourned.

MS. TIRELLI: Thank you, Your Honor.

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: January 14, 2010

Rochelle V. Grant

A-1 Transcripts
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